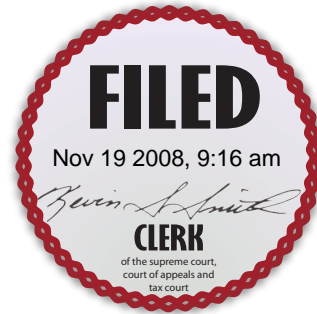


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO D. WRIGHT,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A04-0804-CR-220

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck Jr., Judge
Cause No. 02D04-0703-FA-21

November 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Antonio Wright was convicted of Class B felony Burglary (Count IV),¹ three counts of Class B felony Robbery (Counts V, VI, and VII),² and four counts of Class B felony Criminal Confinement (Counts VIII-XI)³ and sentenced to an executed term of eighty years in the Department of Correction. Upon appeal, Wright challenges the sufficiency of the evidence to support his convictions and the appropriateness of his sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 19, 2007, at approximately 3:00 a.m., four armed men entered an apartment in the Brighton Meadows complex in Fort Wayne where José Perfecto-Pascuel and his brother Alejandro (“Alex”) resided. José’s girlfriend, C.C., was at the apartment at the time, as was Alex’s girlfriend, Megan Witte. The assailants moved José, Alex, C.C. and Witte into a bedroom and forced José into a closet. One assailant told C.C. to have sex with Alex and ordered her at gunpoint to remove her clothes. The assailants placed a gun “in [C.C.’s] privates.” Tr. p. 110.

One of the assailants, whom Witte recognized by the “cornrows” in his hair and who was later identified to be Wright, took Witte’s purse, dumped it in the hallway, and picked up the change. Tr. p. 174. Wright and another assailant later forced Witte to leave the apartment with them in order to drive to an ATM machine and withdraw her money. Upon leaving the apartment, the parties observed police officers in the parking

¹ Ind. Code § 35-43-2-1 (2006).

² Ind. Code § 35-42-5-1 (2006).

³ Ind. Code § 35-42-3-3 (2006).

lot, causing the other assailant to run back to the apartment. According to Fort Wayne Police Officer Juancarlo Gutierrez, an armed robbery had been reported in the vicinity of the Brighton Meadows Apartments, causing officers to respond to the scene. Given the presence of the officers, Wright threatened Witte not to say anything or he would kill her. As Wright and Witte approached Witte's car, Officer Gutierrez drove up and asked them if everything was okay. Afraid for her life and the life of Alex, Witte responded that everything was okay. Wright then drove Witte in her car to an ATM machine. When the ATM did not produce cash, Wright forced Witte out of the vehicle, made her keep trying to withdraw money, and then drove away, leaving her stranded. Witte returned to the apartment and found the police had arrived. José later determined that the assailants had taken his watch and money from under his bed. Alex similarly determined that the assailants had taken his money, as well as a cell phone, a watch, and stereo equipment. Witte reported that the assailants had stolen her cell phone, camera, wallet, and the money and bank cards inside her wallet.

Officer Gutierrez subsequently arrested three of the assailants as they fled from the vicinity of the apartment complex. These assailants were identified to be Austin Knight, Malcolm Ellis, and Johnnie Walker. Three guns were found in their vicinity.

Although Witte was unable to identify Wright as her assailant from a photo lineup, Officer Gutierrez identified him, both in a photographic lineup and at trial, as the person with Witte the night of the robbery. José also identified Wright, both at trial and in a photographic lineup, as one of the assailants and the one who had taken Witte from the apartment.

On March 6, 2007, the State charged Wright with Class B felony burglary (Count IV), three counts of Class B felony robbery (Counts V-VII), and four counts of Class B felony criminal confinement (Counts VIII-XI).⁴ Prior to trial, in a March 28, 2007 letter to the court, Wright referred to his participation, together with the participation of “Jhonnie [sic] Walker, Malcolm Ellis, [and] Austin [] Kinght [sic]” in a plan involving an ATM in which Witte was the victim. State’s Exh. 70.

Following a jury trial on February 26-28, 2008, the jury found Wright guilty of Counts IV through XI. Pursuant to the jury’s verdict, the trial court entered judgment of conviction on Counts IV-XI. In sentencing Wright, the trial court observed, with respect to Counts V and VIII and Counts VI and IX, that while the confinements of Alex and José were separate from the robberies of Alex and José, they were not “far beyond that necessary to commit the robber[ies].” Tr. p. 38. Accordingly, the trial court merged Count VIII into Count V and Count IX into Count VI for sentencing purposes⁵ and sentenced Wright to consecutive sentences of twenty years for Counts IV and X, and ten years each for Counts V, VI, VII and XI, for an aggregate term of eighty years. This appeal follows.

⁴ Based upon another incident, the State also charged Wright with Class A felony burglary and Class B felonies robbery and criminal confinement (Counts I-III). The jury acquitted Wright of these charges.

⁵ Although the trial court stated during the sentencing hearing that Wright was to receive concurrent ten-year sentences for Counts V and VIII and concurrent ten-year sentences for Counts VI and IX, in its sentencing order and in the CCS, the trial court “merged” the sentence for Count VIII into Count V and the sentence for Count IX into Count VI and specifically did not sentence Wright on Counts VIII and IX.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

On appeal, Wright first challenges the sufficiency of the evidence to support his conviction. Specifically, Wright challenges the accuracy of José's and Officer Gutierrez's identifications in light of the fact that Witte, who spent a greater amount of time with the assailant, was unable to identify him to be Wright.

Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Wright's challenge to the sufficiency of the evidence is merely an invitation to reweigh the evidence, which we decline to do. The jury was within its fact-finding discretion to credit José's and Officer Gutierrez's identifications of Wright as the perpetrator. In addition, regardless of the accuracy of these identifications, Wright's own letter referencing his participation in a planned ATM incident involving Witte as a victim, and Walker, Ellis, and Knight—all of whom were apprehended, together with

three guns, in the vicinity of the crime on the night in question—as perpetrators, supports the jury’s verdict concluding that Wright was also one of the perpetrators. Although Wright posed an alternative explanation for this letter at trial, the jury was within its discretion to conclude that his testimony was not credible. Accordingly, we reject Wright’s challenge to the sufficiency of the evidence on the grounds that the evidence was inadequate to identify him as the perpetrator.

II. Appropriateness of Sentence

Wright also challenges the appropriateness of his eighty-year sentence. Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant’s burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

The sentencing range for a Class B felony is from six to twenty years, with the advisory sentence being ten years. *See* Ind. Code § 35-50-2-5 (2006). Accordingly, Wright received the maximum twenty-year sentence for the burglary (Count IV); the maximum twenty-year sentence for the confinement of C.C. (Count X); and the advisory ten-year sentence for each of the robberies of Alex, José, and Witte (Counts V, VI, and VII) and for the confinement of Witte (Count XI).

Apart from claiming his sentence is “inappropriate” as a general matter, Wright’s only specific challenge appears to be that the burglary did not merit a maximum twenty-year sentence because “[t]he [b]urglary was an offense against all of the victims” and “[t]here was nothing particular[ly] depraved about the nature of the burglary or its impact on the victims.” Appellant’s Br. P. 12. We must first observe that, contrary to Wright’s suggestion that the existence of multiple victims somehow minimizes a crime, the fact of multiple victims enhances the impact and gravity of a crime and justifies consecutive sentences, as the trial court imposed here. *See Pittman v. State*, 885 N.E.2d 1246, 1259 (Ind. 2008).

More significantly, however, we cannot agree that there was nothing particularly depraved about the nature of Wright’s crimes. Wright’s crime spree, which involved armed burglary, multiple armed robberies, and multiple armed confinements against multiple victims in the middle of the night in the victims’ private residence where the female victims were singled out—with one forced to undress and subjected to sexual abuse and humiliation and the other removed from her residence at gunpoint and driven to an ATM machine in her own car, where she was abandoned—was remarkably

depraved in nature. Indeed, the trial court found that Wright's crimes fell within "the worst half dozen or so that [the court had] seen over twenty years." Sent. Tr. p. 37. There is nothing about the offenses at issue which suggests that an eighty-year sentence is inappropriate.

As for Wright's character, his participation in the above events is sufficiently indicative of his lack of moral character to justify an eighty-year sentence. In addition, Wright has an extensive juvenile and criminal history which includes true findings for, *inter alia*, escape and battery, which would be felonies if committed by an adult, as well as receiving stolen auto parts, operating while intoxicated, carrying a handgun without a permit, and resisting law enforcement. With respect to his adult criminal history, Wright, who was only twenty at the time of the instant crimes, has accumulated three misdemeanor convictions for carrying a handgun without a license, criminal mischief, and possession of marijuana. Given Wright's lengthy juvenile and criminal history, evincing his indifference to others and to the law, and which serves as a similar indictment of his moral character, we conclude that Wright's eighty-year sentence is appropriate in light of his character and the nature of his offenses.

The judgment of the trial court is affirmed.

RILEY, J. and BAILEY, J., concur.